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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Liberation, a non-governmental organization in consultative status on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 August 1992]

1. Liberation and the Japan Civil Liberties Union are grateful for the progress report of the Special Rapporteur on compensation (E/CN.4/Sub.2/1992/8), the recommendation on traffic in persons made by the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1992/34, page 28) and the resolution of the Sub-Commission (E/CN.4/Sub.2/1992/L.3), which was adopted without a vote on 14 August 1992.

2. On 10 August 1992, in this Sub-Commission, the distinguished representative of Japan mentioned something about what Japan could do for the so-called comfort women of Japan. Liberation regrets, however, that he did not mention any measure for ex-Japanese soldiers in Taiwan and Korea.

3. The Japan Civil Liberties Union's lawyers have been representing Taiwanese ex-Japanese war veterans, and demanding compensation for these victims of colonization by Imperial Japan before the Japanese courts.

4. During the Second World War, Japan conscripted 207,000 Taiwanese and 242,000 Koreans on the basis of the legal fact that they were Japanese, the subjects of the Emperor. The Japanese Government, however, has compensated these victims and their families insufficiently, if at all, while providing enormously large pensions to Japanese veterans or their widows.

5. Japan maintains that this does not violate equality before the law, as those Taiwanese and Koreans are no longer regarded as Japanese citizens. The Supreme Court supported this view this year.

6. Firstly, Japan deprived these victims of Japanese nationality without their consent. Secondly, Liberation wishes to draw the attention of the Sub-Commission to the fact that Japan is a party to the International Covenant on Civil and Political Rights (ICCPR). Thirdly, in the application of article 26 of the ICCPR, the Human Rights Committee took a different view and urged France to pay a pension to a retired Senegalese veteran (see Ibrahim Gaie v. France, Communication 196/1985). Lastly, Liberation believes that this cruel and unreasonable discriminatory treatment of a large number of ex-Imperial Japanese soldiers by Japan constitutes a gross violation of the human rights guaranteed by article 26 of the ICCPR.

7. In this context, Liberation is particularly grateful for the annex of the Special Rapporteur's report, in which the Special Rapporteur proposes the "establishment of courts of human rights, or criminal courts, regionally or internationally, [to] help in the process of making those responsible for gross violations of human rights accountable for their acts ..." (para. 25). Liberation sincerely supports this. It is necessary indeed to establish an international tribunal system which can settle claims from individual victims of gross violations such as the ex-Japanese soldiers in Taiwan and Korea.

8. Liberation also agrees with the view expressed in the annex that claims "relating to reparation of gross violations of human rights should in principle not be subject to a statute of limitations", and that nobody "may be coerced to waive claims for reparation" (para. 27).

9. Liberation is afraid that this will not be enough to prevent any Government from attempting to abandon or nullify the right of individual victims of gross violations of human rights without their consent by abusing treaties. For example, as it is suggested in the above-mentioned Japanese statement, Japan has stated that all claims issues, except the current normalization talks between Japan and the Democratic People's Republic of Korea, were settled by the San Francisco Peace Treaty and other bilateral treaties, such as the 1965 Agreements between Japan and the Republic of Korea. Liberation believes, however, that human rights, which include equality before the law, are inalienable even by international treaties; any Government should respect this as it is stated in the Universal Declaration of Human Rights. In this respect, if Japan claims that the 1965 Agreements deprived ex-Japanese soldiers in Korea of their human right to equality before the law, the Agreements must be regarded as null and void.

10. It is agreed among international lawyers and the United Nations that no Government is allowed to violate the rules of jus cogens, which are established as a rule of general international law and accepted as a peremptory norm by the international law community of States as a whole. This principle of international law was confirmed by article 53 of the Vienna Convention on the Law of Treaties of 1969. Liberation believes that equality before the law must be one of these rules which should be regarded as a peremptory norm.

11. Liberation wishes to suggest that it is necessary to confirm the principle in the future report of the Special Rapporteur that no State can nullify or abandon human rights and fundamental freedoms and that any treaty by which the right to compensation is nullified or abandoned by any State is null and void.

12. Liberation requests the Sub-Commission, as regards the gross violation of the human rights of Korean comfort women, Korean men and women victims of forced labour and ex-Japanese soldiers in Taiwan and Korea, the following:

(a) To request the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms to invite information from all reliable sources such as the Governments of Japan and other relevant countries, international organizations, non-governmental organizations and individuals;

(b) To urge Japan to investigate these cases thoroughly, submit all the relevant information to the Special Rapporteur, admit legal responsibility under international law and pay full compensation to each of the victims;

(c) To invite the Special Rapporteur to prepare a separate report on Japan;

(d) To encourage the Special Rapporteur to study the possibility of establishing an interantional tribunal system which could settle claims of individual victims of such gross violations of human rights and fundamental freedoms as regards the right to restitution, compensaton and rehabilitation.